

Decision **DRAFT DECISION OF ALJ WALKER** (Mailed March 1, 2005)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Terminals LLC for
Authorization to Dispose of Certain Real
Property Located in the City of Huntington
Beach.

Application 05-01-003
(Filed January 6, 2005)

O P I N I O N

1. Summary

Pacific Terminals LLC (Pacific Terminals) seeks authority under Pub. Util. Code § 851 to sell a half acre of real property that it owns in the City of Huntington Beach. We conclude that when Pacific Terminals relocates pipeline and a valve box that are now on the property, the property will no longer be necessary or useful in public utility service, and Pacific Terminals at that time may dispose of the property without further application to this Commission. We further find that relocation of the pipeline facilities is exempt from California Environmental Quality Act (CEQA) review if Pacific Terminals proceeds in the manner required by CEQA Guideline 15284. This proceeding is closed.

2. Background

On January 6, 2005, Pacific Terminals filed this application for authority to dispose of approximately one half acre of real property (the Meadowlark Property) that it owns in the City of Huntington Beach.

Pacific Terminals is a Delaware limited liability company. It is owned by Pacific Energy Group LLC, which in turn is owned by Pacific Energy Partners,

L.P. Pacific Terminals owns and operates various oil pipeline and storage facilities in the Los Angeles Basin that it acquired from Southern California Edison Company (SCE). The facilities consist of 120 miles of pipeline (75 miles of which are active), with connections to a marine berth at the Port of Long Beach and to Los Angeles area refineries. It also owns oil storage tanks totaling 9.4 million barrels of nominal capacity and 11 pumping and heating stations. The company provides oil storage and distribution services to third-party users pursuant to the terms of a Commission approved tariff that allows for negotiated contracts between it and its customers.

Pacific Terminals states that since it acquired SCE's oil pipeline and storage assets in 2003, it has evaluated the assets to determine which facilities are not needed. One of the assets that Pacific Terminals acquired from SCE is the Meadowlark Property, an empty lot located in Huntington Beach on the north side of Warner Avenue near Lark Lane. The west side of the property is bordered by the Meadowlark Golf Club, a public golf course owned by the city. While the property is zoned for commercial use, the surrounding land use is largely residential.

Pacific Terminals' 12-inch diameter pipeline that extends from the company's Alamito Station to Huntington Beach traverses a portion of the southerly boundary of the Meadowlark Property, parallel to Warner Avenue. A valve box is also located on the southern boundary of the property. While most of the pipeline that traverses the Meadowlark Property is buried, the valve box and a segment of pipeline that connects to the valve box are on the surface.

3. Proposed Sale

Pacific Terminals proposes to sell the Meadowlark Property. While it does not now have a buyer, it seeks authority from the Commission to offer the

property for sale without further review by the Commission when the sale takes place. Alternatively, Pacific Terminals proposes to relocate the pipeline and valve box on the property to an existing right-of-way under Warner Avenue. With the removal of the pipeline facilities, the property then would serve no utility purpose and could be sold without further Commission review under a provision of Pub. Util. Code § 851 (*i.e.*, “Nothing in this section [851] shall prevent the sale, lease, encumbrance or other disposition by any public utility of property which is not necessary or useful in the performance of its duties to the public . . .”).

While the property is currently zoned for commercial use, it is located next to a golf course in a predominantly residential area. Pacific Terminals states that it is likely the property will be rezoned for residential use, although at this time the buyer and intended use of the property is unknown. The buyer, however, would be responsible for obtaining any zoning changes and permits necessary to change the use of the property or pursue development, and such approvals would be subject to the jurisdiction and review of the City of Huntington Beach. The utility states that it plans to list the property with a real estate broker, and that further review thereafter by the Commission will be unnecessary.

4. Discussion

No public utility may transfer its property that is necessary or useful in the performance of its duties to the public without first having secured the Commission’s authorization. (Pub. Util. Code § 851.) The purpose of this and related sections is to enable the Commission, before any transfer of public utility property is consummated, to review the situation and to take such action, as a condition of the transfer, as the public interest may require. (*San Jose Water Co.* (1916) 10 CRC 56.) Similarly, under CEQA, we must consider the environmental

consequences of projects, as defined, that are subject to our discretionary approval. (Pub. Resources Code § 21080 and § 21065.)

However, Section 851 does not require Commission review of a utility's disposition of property that is "no longer necessary or useful in the performance of its duties to the public." It is clear that, once the pipeline and valve box are relocated to a nearby right-of-way, the property will no longer serve a public utility purpose.

As for CEQA, Pacific Terminals notes that CEQA Guideline 15284(a) exempts the relocation of pipelines so long as the relocation meets six requirements set forth in subdivision (b) of that guideline. Generally, in order for a pipeline to qualify for this categorical exemption, the diameter of the pipeline must not be increased and the project must be located outside the boundaries of an oil refinery. Here, the pipeline is not located within the boundaries of a refinery, nor will its diameter be increased as part of the relocation.

Relocation of the pipeline meets all other requirements of Guideline 15284. First, the affected section of pipeline must be less than eight miles in length. The affected section of pipeline to be relocated is about 150 feet. Second, the affected section must not be less than eight miles from any section of pipeline that had been subject to a Section 15284 exemption in the past 12 months. Pacific Terminals confirms that the planned relocation meets that requirement. Third, the relocation must not be solely for the purpose of excavating contaminated soil. Pacific Terminals states that the pipeline is being relocated because it is more appropriately located in a nearby right-of-way than on the Meadowlark Property, and not for the purpose of excavating contaminated soil.

Fourth, the utility must prepare a plan to notify appropriate agencies in the event of emergency during the work, and Pacific Terminals states that this will be done. Fifth, the right-of-way must be restored to its pre-project condition after the relocation takes place. Pacific Terminals states that it will restore the right-of-way to its pre-project condition. Finally, Guideline 15284 requires that the relocation comply with applicable laws, including local agency permit processes of the city and county. Pacific Terminals states that such compliance is part of the relocation plan.

Pacific Terminals states that the Geotechnical Evaluation submitted as part of its application indicates there may be low-level concentrations of hydrocarbons on the property, but Pacific Terminals believes the levels are below regulatory action levels. Nevertheless, if contaminated soils are found, this would be remedied as part of the relocation project. Pacific Terminals asks the Commission to find that the remediation would be exempt from CEQA under CEQA Guideline 15330, which provides a categorical exemption for any minor clean-up action, which is defined as removal actions costing \$1 million or less. Excavation and offsite disposal of contaminated soils or sludge are specifically provided as examples of such minor clean-up action. Pacific Terminals states that if minor clean-up is required, the cost would be under \$1 million given the small size of the property.

Based upon the representations of the applicant, we conclude that relocation of the Meadowlark pipeline and valve box to a nearby existing right-of-way on Warner Avenue qualifies for the requested categorical exemptions from CEQA and requires no further CEQA examination by the Commission.

5. Categorization and Need for Hearings

In Resolution ALJ 176-3145, dated January 13, 2005, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. The preliminary determinations made in Resolution ALJ 176-3145 are affirmed.

6. Comments on Draft Decision

The draft decision of the Administrative Law Judge (ALJ) was mailed to the applicant pursuant to Pub. Util. Code § 311(g)(1) and Rule 77.7(b). The draft decision initially denied the application without prejudice to refiling when Pacific Terminals could identify, among other things, the disposition of the oil pipeline on the property. In a supplemental filing, and in comments, Pacific Terminals stated its plans to remove and relocate the pipeline facilities and thus remove the property from utility service. Our decision today finds this supplemental filing sufficient for us to conclude that sale of the property will not be subject to our approval under Pub. Util. Code § 851 once the pipeline is relocated in compliance with CEQA requirements.

7. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Glen Walker is the assigned ALJ in this proceeding.

Findings of Fact

1. Pacific Terminals is an oil pipeline utility subject to the jurisdiction of this Commission.
2. Notice of the filing of the application appeared in the Daily Calendar on January 14, 2005.
3. Pacific Terminals owns and seeks to sell an empty lot called the Meadowlark Property in the City of Huntington Beach.

4. A portion of pipeline and a valve box are located in or on the property.
5. The property was acquired from SCE in 2003 and is surplus to Pacific Terminals' needs except to serve the pipeline and valve box.
6. Pacific Terminals plans to relocate the pipeline and valve box to an existing right-of-way along Warner Avenue.

Conclusions of Law

1. A public hearing is not necessary.
2. The property will no longer be necessary or useful in utility service once the pipeline is relocated.
3. Relocation of the pipeline is subject to a categorical exemption under CEQA.
4. The application should be granted to the extent set forth in this decision.

O R D E R

IT IS ORDERED that:

1. The application of Pacific Terminals LLC for authorization to dispose of certain real property located in the City of Huntington Beach is granted to the extent that the application seeks a determination that the property will not be necessary or useful in utility service when existing pipeline facilities on the property are relocated in compliance with the California Environmental Quality Act.

2. Application 05-01-003 is closed.

This order is effective today.

Dated _____, at San Francisco, California.